

Escrow Agreement for Off-Site Facilities

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Under Section 202 of the Housing Act of 1959 or
Section 811 of the National Affordable Housing Act

OMB Approval No.2502-0470(Exp. 12/31/93)

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This Agreement made this _____ day of _____, 19____, by and between _____, hereinafter called the Depositor, and _____, a corporation having its principal office in _____, hereinafter called the Depository.

Witnesseth: Whereas _____ has entered into a certain Capital Advance Agreement with the United States of America, Secretary of Housing and Urban Development, hereinafter called HUD, dated the _____ day of _____, 19____, providing for the construction of a certain housing project to be financed by capital advances, secured by a _____, hereinafter called the "Mortgage" to HUD.

Whereas it is necessary, in connection with the construction of said project, to provide certain facilities lying outside of the property lines of the project as described in the drawings and specifications attached hereto and made a part hereof and as identified in Schedule "A" attached hereto and which are hereinafter referred to as "off-site construction;" and

Whereas, HUD is unwilling to make advances of mortgage money for the construction of the project without satisfactory assurance that the aforesaid off-site construction will be installed and completed and will be guaranteed against faulty workmanship and/or materials for the period of one year from the date of acceptance by HUD; and

Whereas the Depositor is * _____ and as such is primarily interested in the successful completion and operation of the project aforesaid and the completion of said off-site construction;

Now Therefore This Agreement Witnesseth: That for and in consideration of the premises hereinabove set forth and for the purpose of inducing HUD to disburse the proceeds of the mortgage aforesaid for the construction of the project, and in consideration of the sum of _____ Dollars (\$) _____) paid by the Depositor to the Depository, with such deposits continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD, the parties hereto agree as follows:

1. To the Depositor upon application made by him to the Depository on HUD Form 92464, Request for Approval of Advances of Escrow Funds, in quadruplicate, on or above the first day of each month after the commencement of work on off-site installations. The sum to which the Depositor shall be entitled upon any such release of escrow funds shall be the cost of the portions of the work acceptably completed, as approved by HUD, computed in accordance with Schedule "A" less 10% and less prior release of escrow funds. Thirty days after the completion of all work required by Schedule "A" to the satisfaction of HUD, the Depository shall release to the Depository any balance in the escrow fund herein established.
2. If instead of performing the off-site work, (or any part thereof) Depositor shall cause or permit the same or any part thereof to be performed by or for the account of the municipality or political subdivision in which the mortgaged property lies, then such proportionate part of the escrow fund as it represented by the estimated cost of such part of the off-site of any special assessment which may be levied against the real property included in the mortgage by reason of such improvement, and if not so levied or assessed, or to be levied and assessed, may be released to the Depositor upon completion of the work, with the written consent of HUD, unless required to meet the cost of the remainder of the off-site work.
3. In the event the Depositor fails to complete the said off-site construction on or before _____ 19____, in accordance with drawings and specifications or Schedule "A", or fails to produce to the Depository the written approval of said work by HUD; or in the event there be a default in the mortgage or acquisition of the property by HUD, the Depository shall proceed as provided in either paragraph (a) or paragraph (b) or paragraph (c) below:
(a) Upon receiving written instructions from HUD that HUD is proceeding to complete the said work in accordance with the drawings and specifications Depository shall pay the cost thereof, including all costs and charges of the work from the said sum deposited with it, and for this purpose the said Depository hereby irrevocably authorizes and empowers HUD to do and perform for it, the said Depositor and in its name, place and stead, all matters and things which the said Depository shall in its judgment deem necessary and proper to be done to effectuate the completion of said off-site construction, in accordance with the drawings and specifications, and to cause the Depository to apply the said moneys to the payment of debts contracted or incurred for work done or for materials furnished therefore, or either, in and about said off-site construction and for all expenses, costs and charges in connection therewith, and for the Depository so given and signed by the said Depository as attorney-in-fact shall be good and sufficient voucher for

* **Note:** State here the relationship of Depositor to the project.

all payments made by virtue thereof. Further, in such event, the Depositor hereby irrevocably authorizes and empowers HUD to enter into and upon and said premises and take charge thereof, together will all materials and appliances thereunto belonging and thereupon in the name of the said Depositor, as his attorney-in-fact, to call upon and require the several contractors for the work to be done and for the materials to be furnished in the about the completion of the off-site construction, to proceed to complete and said work according to the drawings and specifications or any changes, alterations, additions or modifications of the said specifications as may be deemed expedient or necessary by HUD and to do whatever in HUD's judgment is shall deem necessary to be done to secure the completion of the said off-site construction according to the drawings and specifications. In the event the work is completed in accordance with the provisions hereof and written approval of said work is given by HUD, any unexpended balance of the said sum do deposited shall thereupon be returned by the Depository to the Depositor, without interest. The depository shall in

no event be responsible for the completion of the said work beyond the expenditure of the sum deposited and if said sum is insufficient for such purpose, the Depository shall be under no duty to demand or obtain additional sums from the Depositor.

(b) Upon receiving written instructions from HUD so to do, the Depository shall pay to HUD, to be applied to the reduction of the mortgage debt or as HUD shall so instruct, all of the unexpended balance of the sum of deposit with the Depository. If said balance shall be more than sufficient to pay off the mortgage indebtedness outstanding, including all costs and obligations to HUD, any balance remaining shall be returned to the Depositor, without interest.

(c) In case there should be a default under the mortgage then the Depository shall turn over the deposit of any remaining balance thereof of HUD which shall thereupon acts as Depository and shall have all powers of the Depository set forth herein and in addition shall have the power to apply the remaining funds deposited hereunder to any sum due under the mortgage.

It is the intention of the parties to this agreement that the Depository shall act solely at all times on instructions from HUD with respect to the said sum deposited of any and all liability or claims of any nature. The Depositor agrees to pay all costs or expenses incurred by said Depository (including court costs and reasonable attorneys' fees) by reason of acting as Depository of the said fund.

It Is Understood and Agreed that whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

This agreement shall be binding upon and insure to the benefit of the respective successors and assigns to the parties hereto and upon the legal representatives of the Depositor. The word "Mortgage" shall be deemed to include deed of trust and word "Mortgagee" shall be deemed to include any holder of the mortgage and beneficiary of a deed of trust and their respective successors and assigns. The word "HUD" shall be deemed to include successor or successors.

In Witness Whereof the parties hereto have caused these presents to be on their behalf and their seals affixed the day and year first above written.

Depositor

Attest:
Secretary

By:
President

Date

Date

Depository

By:
Authorized Official

Date